

**IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT**

MICHAEL GILLICH, III

PLAINTIFF

VS.

CAUSE NO. 24CI2:19-cv-00006

**NATHAN MCWILLIAMS AND
BOYD BILOXI, LLC DBA
IP CASINO RESORT SPA**

DEFENDANTS

FIRST AMENDED COMPLAINT

NOW INTO COURT, comes Plaintiff, Michael Gillich, III, by and through his attorneys, Jason Ruiz and Morris Bart, Ltd., who files this Complaint against Defendants, Nathan McWilliams and Biloxi Boyd, LLC dba IP Casino Resort Spa and would show unto this Honorable Court the following to-wit:

PARTIES AND VENUE

1. The Plaintiff, Michael Gillich, III, is domiciled and resides in Harrison County, Mississippi.
2. Defendant, Nathan McWilliams, upon information and belief, is a resident citizen of Jackson County, Mississippi, residing at 11609 FoxRidge Road, Vancleave, MS 39565 and may be served with process pursuant to Mississippi law, or wherever he may be found.
3. Defendant, Boyd Biloxi, LLC dba IP Casino Resort Spa (“IP Casino”) is a limited liability company, doing business as IP Casino Resort Spa, is a wholly owned subsidiary of Boyd Gaming Corporation, a Nevada corporation, and, may be served process according the Mississippi Rules of Civil Procedure.

4. This cause of action occurred or accrued in Harrison County, Mississippi; and pursuant to the provisions Miss. Code Ann. § 11-11-3, as amended, venue is proper in this Court.

FACTS

5. On September 15, 2019, at approximately 8:15 p.m., Defendant, Nathan McWilliams, was driving a 2000 GMC Sierra, heading northbound from Fayard Street and making a left hand turn onto Bayview Avenue to head west.
6. At the same time and place, Plaintiff, Michael Gillich, III, was a pedestrian attempting to cross Bayview Avenue from a gravel parking lot that was south of Bayview Avenue and was on his way to the north side of Bayview Avenue.
7. As Gillich was almost to the other side of the road, McWilliam's vehicle struck Gillich with the right front of his vehicle at a high rate of speed and then fled the scene.
8. A witness, who is at this time unidentified, followed McWilliams to his residence in Vancleave, Mississippi, where he was arrested for DUI.
9. McWilliams was driving while highly intoxicated under the influence of alcohol or other intoxicants when he struck Gillich.
10. McWilliams was an employee of IP Casino and had been drinking while "on the clock" earlier that day while on the job and at a property that was owned by IP Casino but offsite from the main property.
11. McWilliams finished his work for the day before the incident and then returned to IP Casino to clock out.
12. And, despite being visibly intoxicated in addition to being known to habitually drink alcoholic beverages to excess, McWilliams continued to drink at IP Casino before leaving and striking Gillich.

13. IP Casino employees knew or should have known that McWilliams was drinking on the job and continued to serve him after he had clocked out.

COUNT ONE: NEGLIGENCE AND GROSS NEGLIGENCE OF MCWILLIAMS

14. The aforesaid collision sued on herein was the fault of, and proximately caused by the negligence and gross negligence of Defendant, Nathan McWilliams AND IP Casino, in the following, non-exclusive respects:

- a. By operating a motor vehicle under the influence of alcohol or other intoxicants in violation of Miss. Code Ann. Sec. § 63-11-30, *et al.*;
- b. In violating Miss. Code Ann. Sec. § 63-3-1103, pedestrians' right-of-way at crosswalks lacking traffic control signals, which states that where traffic control signals are not in place or in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within any marked crosswalk or within any unmarked crosswalk at an intersection, except as otherwise provided;
- c. In violating Miss. Code Ann. § 63-3-1112, which states in pertinent part that every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person;
- d. By operating a vehicle at an excess rate of speed in violation of Miss. Code Ann. § 63-3-511, *et. seq.*;
- e. In violating Miss. Code Ann. § 63-3-505, which states that the driver or operator of any motor vehicle must decrease speed when approaching and crossing an intersection;
- f. By failing to maintain reasonable and proper control of said vehicle upon a public road;
- g. In operating the vehicle under his control in an improper, unsafe, negligent and grossly negligent manner;
- h. In driving a vehicle with reckless disregard for the safety of the Plaintiff and the motoring public in violation of Miss Code Ann § 63-3-1201 *et. seq.*;
- i. By failing to see what should have been seen;
- j. By needlessly endangering other travelers in the road;

- k. By failing to keep a careful lookout; and
- l. All other acts of negligence and/or gross negligence which were the cause of the collision sued upon and will be revealed by the way of discovery at the trial of this matter.

15. As a result of the aforesaid collision, Gillich has suffered serious injuries to his ribs, shoulder and knee and damages, past and future, as may be shown by a preponderance of the evidence: bills for medical treatment; physical pain and suffering including loss of enjoyment of life; fear for the future consequences of the injuries sustained and past and ongoing mental and emotional anguish and distress; loss of wages in amount to be determined; and permanent impairment.

16. In addition to compensatory damages, the conduct of McWilliams was so reckless and grossly negligent, and evidences a total and/or wanton disregard for the life and welfare of the public, especially Gillich; that Gillich seeks punitive damages against both Defendants to punish them and make an example of them to prevent others from committing such gross acts of negligence in the future.

17. At all relevant times herein, McWilliams, was acting in the course and scope of his employment or as part of a joint venture or otherwise for the mutual benefit of himself and IP Casino when he became intoxicated. Stated another way, the intoxication occurred while McWilliams completed a job-related function for IP Casino. Further, the actions that he took while intoxicated and at the time of the incident were a continuation of his actions while "on the clock" with IP Casino. As such and under the theories of *respondeat superior*, joint venture and/or agency both McWilliam and IP Casino are responsible for Gillich being run over and the damages resulting thereto.

COUNT TWO: DRAM SHOP LIABILITY FOR THE NEGLIGENCE AND GROSS NEGLIGENCE OF ALCOHOL SERVER AND IP CASINO

18. Gillich would incorporate all of the above preceding paragraphs by reference.

19. In addition to and/or *in the alternative*, McWilliams was a business invitee and was last served alcohol at IP Casino before leaving IP Casino drunk and injuring a pedestrian attempting to enter IP Casino.

20. IP Casino is a holder of an Alcohol Beverage Control permit that grants the privilege of the sale of alcoholic beverages, beer and/or wine to the public for profit.

21. IP Casino, through its employees, did serve alcohol to McWilliams at a time when he was visibly intoxicated and/or known to habitually drink alcoholic beverages to excess and such actions were the proximate cause of Gillich's injuries and damages.

22. The aforesaid injuries and damages sued on herein was the fault of, and proximately caused by the negligence and gross negligence of IP Casino in the following, non-exclusive respects:

- a. By serving a visibly intoxicated person or someone known to habitually drink alcoholic beverages to excess in violation of Miss. Code. Ann. §§ 67-3-53(b) and 67-3-73;
- b. In negligently and grossly negligently serving alcohol to a visibly intoxicated patron;
- c. In violating the Revised Statutes of the State of Mississippi, all of which are pled as if copied herein *in extenso*;
- d. In violating the Mississippi Gaming Regulations. Miss. Admin. Code 13-3:1.2;
- e. In serving alcohol in a willful, wanton and reckless manner; and,
- f. All other acts of negligence and/or gross negligence, which were a proximate cause of the collision sued upon and will be shown at the trial of this matter.

**COUNT THREE: NEGLIGENT HIRING, TRAINING, RETENTION
AND/OR SUPERVISION**

23. Gillich would incorporate all of the above preceding paragraphs by reference.

24. IP Casino is further and/or alternatively liable for the injuries and damages of Gillich as detailed above by failing to properly qualify, train, retain and/or supervise McWilliams.

25. The IP Casino through its employees, agents and representatives either knew or should have known of McWilliams's intoxication on the day in question and was also aware or should have been aware that he was and is someone to habitually drink alcoholic beverages to excess.

26. Yet, IP Casino's employees took no action to stop Mr. McWilliams from leaving the casino visibly intoxicated and further refrained from taking any actions to stop him from driving while intoxicated. In fact, they served him at least one more drink.

27. At all relevant times herein, these employees were acting in the course and scope of his or her respective employment or as part of a joint venture or otherwise for the mutual benefit of IP Casino. As such and under the theories of *respondeat superior*, joint venture and/or agency IP Casino is responsible for their actions and omissions which proximately resulted in the damages and injuries to Gillich as stated above.

28. Gillich is entitled to a trial by jury on all issues and all counts herein, and pray for a trial by jury on all issues raised herein.

WHEREFORE, your Plaintiff, Michael Gillich, III, prays that Defendants be served with a copy of this Complaint, and after being duly cited to appear and answer hereto, and after the expiration of all legal delays and due proceedings are had, that there be Judgment rendered herein in favor of Plaintiff and against Defendants, as alleged, together with legal interest as allowed by law, and for all costs of these proceedings, and for all legal and equitable relief this Honorable court shall deem appropriate. Further, a **TRIAL BY JURY** is requested on all issues and all counts raised herein.

RESPECTFULLY SUBMITTED, this the 29th day of January 2019.

MORRIS BART, LTD.
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(228) 432-9000, Telephone
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BY: */s/ Jason Ruiz*
JASON RUIZ, MSB # 101768

CERTIFICATE OF SERVICE

I, Jason Ruiz, do hereby certify that I have on the 29th day of January 2019, caused to be served a copy of the foregoing pleading on all parties to this proceeding, by electronic means or through the U.S. Postal Service to:

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